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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/400,649	09/21/1999	ANDREW J. SZABO	SZABO-201.1	3645
7590	11/03/2005		EXAMINER	
MILDE HOFFBERG & MACKLIN LLP COUNSELORS IN INTELLECTUAL PROPERTY LAW SUITE 460 10 BANK STREET WHITE PLAINS, NY 10606			ART UNIT	PAPER NUMBER
			DATE MAILED: 11/03/2005	

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Notification of Non-Compliant Appeal Brief (37 CFR 41.37)</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/400,649	SZABO, ANDREW J.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Sam Rimell	2164	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on 08 November 2004 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer. **EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.**

1.  The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2.  The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3.  At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4.  (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5.  The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi))
6.  The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7.  The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8.  The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner **and relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9.  The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10.  Other (including any explanation in support of the above items):

Pursuant to item #1, appellant has changed the Real Party of Interest from Andrew Szabo in the previous brief of 7/12/04 to Alberti Anenometer, LLC in the current brief. Assignee records for this application do not show Alberti Anenometer LLC as the assignee (see attached assignment records numbered as pages 1-4). Applicant is required to provide copies of the assignment papers to Alberti Anenometer LLC to verify the real party of interest. To expedite prosecution, it is requested that these documents be submitted by fax to (571) 273-8300.

Sam Rimell  
Primary Examiner  
Art Unit: 2164

(1)

## Patent Assignment Assignee Details

**Assignee Name : SMEATON PUMP LLC**

**Total Assignments: 1**

**Assignment: 1**

<b>Reel/Frame:</b> <u>015980 / 0031</u>	<a href="#"><u>View Recorded Assignment</u></a>	<b>Pages:</b> 3
<b>Received:</b> 11/17/2004	<b>Recorded:</b> 11/15/2004	<b>Mailed:</b> 05/09/2005

**Conveyance:** ASSIGNMENT OF ASSIGNORS INTEREST (SEE DOCUMENT FOR DETAILS).

**Assignor**

**1 SZABO, ANDREW** **Exec Dt:** 07/09/2004

**Assignee**

**1 SMEATON PUMP LLC**  
 171 MAIN STREET, #271  
 LOS ALTOS, CALIFORNIA 94022

**Properties**

App #	PCT #	Pat #	Pub #	App #	PCT #	Pat #	Pub #
<u>08671413</u>	NONE	<u>5954640</u>	NONE	<u>09400649</u>	NONE	NONE	NONE

**Correspondence name and address**

STEVEN M. HOFFBERG  
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 10 BANK STREET - SUITE 460  
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Search Results as of: 10/30/2005 10:13:57 A.M.

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If you have any comments or questions concerning the data displayed, contact OPR / Assignments at 571-272-3350  
 Web interface last modified: September 28, 2005

11-17-2004

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Form PTO-1595 (Rev. 09/04)  
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To the Director of the U.S. Patent and Trademark Office: Please record the attached documents or the new address(es) below.

**1. Name of conveying party(ies)/Execution Date(s):**

Andrew Szabo

Execution Date(s) 07/09/2004Additional name(s) of conveying party(ies) attached?  Yes  No**3. Nature of conveyance:**

- Assignment  Merger  
 Security Agreement  Change of Name  
 Government Interest Assignment  
 Executive Order 9424, Confirmatory License  
 Other \_\_\_\_\_

**4. Application or patent number(s):**

A. Patent Application No.(s)

09/400,649

 This document is being filed together with a new application.

B. Patent No.(s)

5,954,640

11/16/2004 GTOH11 00000229 09400649

01 FC:802

80.00 OP

Additional numbers attached?  Yes  No**5. Name and address to whom correspondence concerning document should be mailed:**

Name: Steven M. Hoffberg

Internal Address: Milde &amp; Hoffberg LLP

Street Address: 10 Bank Street - Suite 460

City: White Plains

State: NY Zip: 10606

Phone Number: 914-949-3100

Fax Number: 914-949-3416

Email Address: steve@hoffberg.org

**9. Signature:**

Signature

Steven M. Hoffberg

Name of Person Signing

Total number of pages including cover sheet, attachments, and documents:

5

Documents to be recorded (including cover sheet) should be faxed to (703) 306-5995, or mailed to:  
Mail Stop Assignment Recordation Services, Director of the USPTO, P.O.Box 1450, Alexandria, V.A. 22313-1450PATENT  
REEL: 015980 FRAME: 0031

(3)

## ASSIGNMENT OF PATENT RIGHTS

For good and valuable consideration, the receipt of which is hereby acknowledged, Andrew Szabo having a residence at 22 Greenway Drive; Greenwich, CT 06831, ("Assignor"), does hereby sell, assign, transfer and convey unto Smeaton Pump LLC, a Delaware limited liability company, having an office at 171 Main Street, #271, Los Altos, California 94022 ("Assignee") or its designees, all of Assignor's right, title and interest in and to the patent applications and patents listed below, any patents, registrations, or certificates of invention issuing on any patent applications listed below, the inventions disclosed in any of the foregoing, any and all counterpart United States, international and foreign patents, applications and certificates of invention based upon or covering any portion of the foregoing, and all reissues, re-examinations, divisionals, renewals, extensions, provisionals, continuations and continuations-in-part of any of the foregoing (collectively "Patent Rights").

<u>Docket Status</u>	<u>Patent or Application No.</u>	<u>Country</u>	<u>Filing Date</u>	<u>Title and Inventor(s)</u>
Szabo-201 Issued First MF Paid	08/671,413 US 5,954,640	US	June 27, 1996	Nutritional Optimization System or Method Andrew Szabo
Szabo-201.1 Pending Appeal Brief Due July 6, 2004	09/400,649	US	September 21, 1999	Nutritional Optimization System and Method Andrew Szabo

Assignor represents, warrants and covenants that: (i) it is the sole owner, assignee and holder of record title to the Patent Rights identified above, (ii) it has obtained and properly recorded previously executed assignments for all patent applications and patents identified above as necessary to

Document Id: Szabo Smeaton (3)

(4)

fully perfect its rights and title therein in accordance with governing law and regulations in each respective jurisdiction, and (iii) it has full power and authority to make the present assignment. Assignor shall indemnify and hold harmless Assignee for any breach of the foregoing.

Assignor further agrees to and hereby does sell, assign, transfer and convey unto Assignee all rights: (i) in and to causes of action and enforcement rights for the Patent Rights including all rights to pursue damages, injunctive relief and other remedies for past and future infringement of the Patent Rights, and (ii) to apply in any or all countries of the world for patents, certificates of invention or other governmental grants for the Patent Rights, including without limitation under the Paris Convention for the Protection of Industrial Property, the International Patent Cooperation Treaty, or any other convention, treaty, agreement or understanding. Assignor also hereby authorizes the respective patent office or governmental agency in each jurisdiction to issue any and all patents or certificates of invention which may be granted upon any of the Patent Rights in the name of Assignee, as the assignee to the entire interest therein.

Assignor will, at the reasonable request of Assignee and without demanding any further consideration therefor, do all things necessary, proper, or advisable, including without limitation the execution, acknowledgment and recordation of specific assignments, oaths, declarations and other documents on a country-by-country basis, to assist Assignee in obtaining, perfecting, sustaining, and/or enforcing the Patent Rights. Such assistance shall include providing, and obtaining from the respective inventors, prompt production of pertinent facts and documents, giving of testimony, execution of petitions, oaths, powers of attorney, specifications, declarations or other papers and other assistance reasonably necessary for filing patent applications, complying with any duty of disclosure, and conducting prosecution, reexamination, reissue, interference or other priority proceedings, opposition proceedings, cancellation proceedings, public use proceedings, infringement or other court actions and the like with respect to the Patent Rights.

The terms and conditions of this Assignment shall inure to the benefit of Assignee, its successors, assigns and other legal representatives, and shall be binding upon Assignor, its successor, assigns and other legal representatives.

IN WITNESS WHEREOF this Assignment of Patent Rights is executed at Bank of New York on July 9, 2004

**ASSIGNOR**

By: Andrew Szabo

Name: Andrew Szabo

Title: \_\_\_\_\_

(Signature **MUST** be notarized)

Subscribed and sworn to before me  
this 9 day of July, 2004

J. R. S.  
Notary Public  
Date Commission Expires: Jan 30, 2008